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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/686,073	10/11/2000	David Traynor	2043.165US1	5507
49845 7590 06/30/2009 SCHWEGMAN, LUNDBERG & WOESSNER/EBAY P.O. BOX 2938 MINNEAPOLIS, MN 55402				
EXAMINER COLBERT, ELLA				
ART UNIT 3696		PAPER NUMBER		
NOTIFICATION DATE 06/30/2009		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTO@SLWIP.COM

Office Action Summary

Application No.

09/686,073

Applicant(s)

TRAYNOR ET AL.

Examiner

Ella Colbert

Art Unit

3696

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 April 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 8-10, 15, 32 and 33 is/are pending in the application.
- 4a) Of the above claim(s) 35, 37 and 38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 8-10, 15, 32 and 33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/C)
- Paper No(s)/Mail Date 06/20/08, 03/09/09, 04/06/09.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1-4, 8-10, 15, 32, and 33 are pending in this communication filed 04/06/09 entered as Election/Restriction.

Claims 1-4, 8-10, 15, 32, and 33 have been elected and claims 35, 37, and 38 have been withdrawn without traverse.

Group I, claims 1-4, 8-10, 15, 32, and 33 were elected for prosecution on the merits and claims 35, 37, and 38 have been withdrawn without prejudice.

Applicants' election without traverse of claims 1-4, 8-10, 15, 32, and 33 in the response filed 04/06/09 is acknowledged.

Claims 35, 37, and 38 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention. There being no allowable generic or linking claim. Election was made without traverse in the reply filed on 04/06/09.

Specification

The Specification is objected to because of the following informalities: Pg. 2, "Summary of the Invention", line 9 recites "converting can derives the feedback ..., from." This should recite "converting derives the feedback ..., from."

Pg. 13 contains the acronyms DTMF in line 27 and WML in line 29. Acronyms should be written, for example: Dual-Tone Multi-Frequency (DTMF). It cannot be determined what WML is since it could stand for many different things.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, recites “a plurality of price choice selection controls”. It is unclear and indefinite where the price choice selection controls are located. Are the price choice selection control buttons on the computer screen or are they icons on a display screen. Claim 15 has a similar problem. Claims 2-4, 8-10, 32 and 33 are also rejected for their dependency from a rejected base claim.

Claims 15 and 33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 15 elements “**means for communicating**” and “**means for generating**” are means (or step) plus function limitations that invokes 35 U.S.C. 112, sixth paragraph. However, the written description fails to disclose the corresponding structure, material, or acts for the claimed function.

Applicant is required to:

- (a) Amend the claim so that the claim limitation will no longer be a means (or step) plus function limitation under 35 U.S.C. 112, sixth paragraph; or

(b) Amend the written description of the specification such that it expressly recites what structure, material, or acts perform the claimed function without introducing any new matter (35 U.S.C. 132(a)).

If applicant is of the opinion that the written description of the specification already implicitly or inherently discloses the corresponding structure, material, or acts so that one of ordinary skill in the art would recognize what structure, material, or acts perform the claimed function, applicant is required to clarify the record by either:

(a) Amending the written description of the specification such that it expressly recites the corresponding structure, material, or acts for performing the claimed function and clearly links or associates the structure, material, or acts to the claimed function, without introducing any new matter (35 U.S.C. 132(a)); or

(b) Stating on the record what the corresponding structure, material, or acts, which are implicitly or inherently set forth in the written description of the specification, perform the claimed function. For more information, see 37 CFR 1.75(d) and MPEP §§ 608.01(o) and 2181.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
USPQ 459 (1966), that are applied for establishing a background for determining

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-3, 15, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over (US 6,606,608) Bezos et al, hereafter Bezos in view of Ubid.com, hereafter Ubid.

Claims 1 and 15. Bezos discloses, A sales activity feedback method, including: communicating, via a network, information to a user interface, the information pertaining to a plurality of price choices for an item offered in a network based sales system and information causing the user interface to display a plurality of price choice selection controls selectively corresponding to the plurality of price choices (col. 2, lines 3-45); generating a feedback indication for the item, at each of the plurality of price choices, using supply and sales level information generated from the actions of other users of the network based sales system (col. 2, lines 46-60 and col. 5, line 52-col. 6, line 17) and communicating, via the network, the feedback indication to the user interface (col. 6, lines 18-65). Bezos did not expressly state a user interface. However, Bezos references a browser for selecting various items that are to be purchased. Ubid

discloses as "buy it now" with the prices dynamically changing as shown in the photographs of the different items that are being bid on which is interpreted as a feedback. Bezos and Ubid together are interpreted as disclosing the claim limitations to claims 1 and 15.

Claims 2 and 32. Bezos discloses, wherein the communicating of the feedback includes displaying the feedback indication in the user interface (col. 6, lines 7-17 and fig. 5).

Claim 3. Bezos discloses, wherein the communicating of the feedback comprises displaying the feedback indication in the form of one of a series of different pictorial icons (col. 3, line 65-col. 4, line 14). The recitation "wherein the communicating of the feedback comprises displaying the feedback indication in the form of one of a series of different pictorial icons" constitutes functional descriptive material, which is not afforded patentable weight. The communication of feedback would have been performed in the same manner regardless of whether there were a series of different pictorial icons. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F. 2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F. 3d 1579, 32 USPQ 2d 1031 (Fed. Cir. 1994).

Claims 4, 8-10, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over (US 6,606,608) Bezos et al, hereafter Bezos in view of Ubid.com, hereafter Ubid and further in view of (US 6,101,484) Halbert et al, hereafter Halbert.

Claims 4 and 33. Bezos, and Ubid failed to disclose, wherein the feedback indication is associated with one or more factors selected from a group including quantities of the item sold, quantities of the item reserved at future price points, quantities of the item for which a reminder request has been entered, and the time duration incurred to sell the item. Halbert discloses, wherein the feedback indication is associated with one or more factors selected from a group including quantities of the item sold, quantities of the item reserved at future price points, quantities of the item for which a reminder request has been entered, and the time duration incurred to sell the item (col. 8, lines 1-60). Only one of the factors from the group needs to be shown in the reference.

Claim 8. Bezos, and Ubid failed to disclose, wherein the generating the feedback is performed continuously in near real time. Halbert discloses, wherein the generating the feedback is performed continuously in near real time (col. 12, lines 3-26).

Claim 9. Bezos, and Ubid failed to disclose, wherein communicating of the information includes communicating time-separated price choices from a falling-price schedule. Halbert discloses, wherein communicating of the information includes communicating time-separated price choices from a falling-price schedule (col. 11, lines 40-50).

Claim 10. Bezos, and Ubid failed to disclose, The method of claim 1 wherein the communication of information includes communicating information causing the user interface to display a present price, at least one future price, a present purchase control button next to the present price and a future purchase control button next to the at least

one future price. Halbert discloses, The method of claim 1 wherein the communication of information includes communicating information causing the user interface to display a present price, at least one future price, a present purchase control button next to the present price and a future purchase control button next to the at least one future price (col. 11, line 51-col. 12, line 38). Bezos in col. 2, lines 40-45 has buttons where a bidder can press a bid now button and in col. 4, lines 6-14 an icon can be selected. It is interpreted that Bezos and Halbert together disclose the limitation of claim 10.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Jon Ketcham, Vernon L. Smith, Arlington W. Williams; "A Comparison of Posted-Offer and Double-Auction Pricing Institutions".

Timothy S. Vaughan; "A Model of the Perishable Inventory System with Reference to Consumer-Realized Product Expiration".

Rittenhouse, R.C.; "Action builds on 1190 Clean Air compliance".

Elliott, Steven Robert; "Innovative Rate Structures For Electrical Utility Peak Load Management: An Experimental Approach".

Inquiries

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ella Colbert whose telephone number is 571-272-6741. The examiner can normally be reached on Monday, Tuesday, and Thursday, 5:30AM-3:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dixon Thomas can be reached on 571-272-6803. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ella Colbert/
Primary Examiner, Art Unit 3696

June 22, 2009